

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

December 4, 2018 at 1:30 p.m.

Notice

**The court has reorganized the cases, placing all of the
Final Rulings in the second part of these Posted Rulings,
with the Final Rulings beginning with Item 11.**

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| 1. | <u>14-29903-C-13</u> <u>DJD-1</u> | BIENVENIDO/PRISCILA DE LA CRUZ Chad Johnson | MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY 10-31-18 <u>[102]</u> |
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Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 2018. 28 days' notice is required. That requirement was met.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the

moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and the court shall issue an order confirming the modification of the automatic stay as provided in the confirmed Chapter 13 Plan.

Specialized Loan Servicing, LLC ("Movant") seeks relief from the automatic stay with respect to Bienvenido G. De La Cruz and Priscila D. De La Cruz ("Debtors") real property commonly known as 1170 Jack London Drive, Vallejo, California ("Property"). Movant asserts that Debtors confirmed Plan expressly lifted the automatic stay with respect to the Property. Specifically, Movant is listed as a Class 4 Creditor and as stated in the language in Class 4 of the Plan Section 2.11 "Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of Class 4 secured claims to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Dckt. 84, Section 2.11.

The Motion requests that the court issue an "Order stating that no automatic stay applies to the Property." Motion, p. 2:1; Dckt. 102. No legal authority is provided, even by summary reference, for the court issuing such "declaratory relief" pursuant to a motion by Movant.

CHAPTER 13 TRUSTEE NON-OPPOSITION:

The Chapter 13 Trustee does not oppose the relief sought by Movant. (Dckt. 106)

DISCUSSION

The court notes the language in identified in Debtor's Plan with respect to Class 4 creditors, specifically that the Creditor is allowed to exercise its rights against its collateral "*in the even of a default.*" Dckt. 84, ¶ 2.11. As asserted by Movant, the language of this provision is effective upon confirmation the stay is "modified" to allow a creditor to exercise rights against the collateral securing the claim - not that "no automatic stay applies to the property." The stay may exist as to other creditors or other persons who attempt to act against the Property owned by the Debtor.

Normally, a request for a declaration of the rights of parties must be made by adversary proceeding. Fed. R. Bankr. P. 7001. However, Congress has authorized in 11 U.S.C. § 362(j):

- (j) On request of a party in interest, the court shall issue an order under subsection
- (c) confirming that the automatic stay has been terminated.

Federal Rule of Bankruptcy Procedure 4001(a)(1) provides that a request for relief from the automatic stay shall be made by motion as provided in Federal Rule of Bankruptcy Procedure 9014.

Recognizing the significant consequences of a violation of the stay and the (reasonable) reluctance of people to present their own legal conclusions as to the effect of various bankruptcy proceedings, discretion is the better part of valor, with such orders confirming the status of the automatic

stay being a reasonable, and prudent, request of a creditor or other party moving to act in a manner which could be construed as impacted by the automatic stay.

While Movant correctly seeks such relief, it does so without providing the court with the basic legal grounds for such a “declaratory order” being issued. Rather than having it’s counsel review the provisions of 11 U.S.C. § 362 and simply include them in the Motion, counsel is instructed to just demand relief from the court, relying on the court and judicial staff to provide free paralegal and associate attorney services for Movant.

As the Supreme Court has instructed (and admonished) the trial courts and parties, merely because someone asks for relief and nobody responds, the federal courts cannot just hand out whatever relief was requested. It must be as permitted by law and supported by the evidence. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010).

At the hearing, the court addressed with counsel for Movant the need to impose corrective sanctions in the amount of \$500.00 to be paid by counsel and an additional \$500.00 to be paid by Movant. Fed. R. Bankr. P. 9011 and the court’s inherent power to manage the conduct of counsel and parties before the court. A motion such as this should be part of a well establish portfolio of creditor counsel’s motion inventory, with the simple authorities.

Counsel for Movant responded, xxxxxxxxxxxxxxxxxxxxxxxxx

DECISION

Based on a review of the evidence the court determines that the Stay has been modified with respect to Movant’s secured claim upon the confirmation of Debtor’s Plan listing Movant as a Class 4 creditor. The modification allows Movant, and only Movant, to exercise certain rights against the Property. It does not obliterate the automatic stay for everyone and everything with respect to the property.

The court shall issue an order confirming that the automatic stay has been modified to allow Movant “to exercise its rights against its collateral and any nondebtor in the event of a default under

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Specialized Loan Servicing, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the confirmed Second Modified Chapter 13 Plan in this Bankruptcy Case (Second Modified Plan, Dckt. 84; Order, Dckt. 94) modifies the automatic stay for Specialized Loan Servicing, LLC with respect to its claim secured by the real property commonly known as 1170 Jack London Drive, Vallejo, California, as follows:

all bankruptcy stays are modified to allow Specialized Loan Servicing, LLC as the holder of a Class 4 secured claim to exercise its rights against its collateral 1170 Jack London Drive, Vallejo, California, and any nondebtor in the event of a default under applicable law or contract.

No further order of the court is required for the above modification of the automatic to be effective.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 2018. 28 days' notice is required. That requirement was met.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion is granted and the court shall issue an order confirming the modification of the automatic stay as provided in the confirmed Chapter 13 Plan.

Specialized Loan Servicing, LLC, as servicer for Wells Fargo Bank, N.A. as trustee for Option One Mortgage Loan Trust 2007-FXD1 ("Movant") seeks relief from the automatic stay with respect to Wayne Anthony McIntosh and Maureen Elizabeth McIntosh ("Debtors") real property commonly known as 777 Tyne Court, Benicia, California ("Property"). Movant asserts that Debtors confirmed Plan expressly lifted the automatic stay with respect to the Property. Specifically, Movant is listed as a Class 4 Creditor and as stated in the language in Class 4 of the Plan Section 2.11 "Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of Class 4 secured claims to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Dckt. 38, Section 2.11.

CHAPTER 13 TRUSTEE NON-OPPOSITION:

The Chapter 13 Trustee does not oppose the relief sought by Movant. (Dckt. 106)

DISCUSSION

The court notes the language in identified in Debtor's Plan with respect to Class 4 creditors, specifically that the Creditor is allowed to exercise its rights against its collateral "*in the even of a default.*" Dckt. 38, ¶ 3.11. As asserted by Movant, the language of this provision is effective upon confirmation the stay is "modified" to allow a creditor to exercise rights against the collateral securing the claim - not that "no automatic stay applies to the property." The stay may exist as to other creditors or other persons who attempt to act against the Property owned by the Debtor.

Normally, a request for a declaration of the rights of parties must be made by adversary proceeding. Fed. R. Bankr. P. 7001. However, Congress has authorized in 11 U.S.C. § 362(j):

- (j) On request of a party in interest, the court shall issue an order under subsection
- (c) confirming that the automatic stay has been terminated.

Federal Rule of Bankruptcy Procedure 4001(a)(1) provides that a request for relief from the automatic stay shall be made by motion as provided in Federal Rule of Bankruptcy Procedure 9014.

Recognizing the significant consequences of a violation of the stay and the (reasonable) reluctance of people to present their own legal conclusions as to the effect of various bankruptcy proceedings, discretion is the better part of valor, with such orders confirming the status of the automatic stay being a reasonable, and prudent, request of a creditor or other party moving to act in a manner which could be construed as impacted by the automatic stay.

While Movant correctly seeks such relief, it does so without providing the court with the basic legal grounds for such a "declaratory order" being issued. Rather than having it's counsel review the provisions of 11 U.S.C. § 362 and simply include them in the Motion, counsel is instructed to just demand relief from the court, relying on the court and judicial staff to provide free paralegal and associate attorney services for Movant.

As the Supreme Court has instructed (and admonished) the trial courts and parties, merely because someone asks for relief and nobody responds, the federal courts cannot just hand out whatever relief was requested. It must be as permitted by law and supported by the evidence. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010).

At the hearing, the court addressed with counsel for Movant the need to impose corrective sanctions in the amount of \$500.00 to be paid by counsel and an additional \$500.00 to be paid by Movant. Fed. R. Bankr. P. 9011 and the court's inherent power to manage the conduct of counsel and parties before the court. A motion such as this should be part of a well establish portfolio of creditor counsel's motion inventory, with the simple authorities.

Counsel for Movant responded, xxxxxxxxxxxxxxxxxxxxxxxxxxxx

DECISION

Based on a review of the evidence the court determines that the Stay has been modified with respect to Movant's secured claim upon the confirmation of Debtor's Plan listing Movant as a Class 4 creditor. The modification allows Movant, and only Movant, and its principals, agents, and successors, to exercise certain rights against the Property. It does not obliterate the automatic stay for everyone and everything with respect to the property.

The court shall issue an order confirming that the automatic stay has been modified to allow Movant "to exercise its rights against its collateral and any nondebtor in the event of a default under

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Specialized Loan Servicing, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the confirmed Second Modified Chapter 13 Plan in this Bankruptcy Case (1st Amended Plan, Dckt. 38; Order, Dckt. 52) modifies the automatic stay for Specialized Loan Servicing, LLC, and its principals, agents, and successors with respect to its claim secured by the real property commonly known as 777 Tyne Court, Benicia, California, as follows:

- (a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . (1);
- (2) modified to allow Specialized Loan Servicing, LLC as the holder of a Class 4 secured claim to exercise its rights against 777 Tyne Court, Benicia, California its collateral and any nondebtor in the event of a default under applicable law or contract; . . . , and to exercise its rights against any nondebtor.

No further order of the court is required for the above modification of the automatic to be effective.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on August 3, 2018. Twenty-eight days notice is required. That requirement is met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and the case is dismissed.

The Chapter 13 Trustee seeks dismissal of Debtors' case based on the following:

A. Debtors are delinquent in plan payments in the amount of \$7,491.62, with another Plan payment in the amount of \$3,078.27 due prior to the date of the hearing. Debtors have paid \$10,978.00 into the plan to date.

DEBTOR'S RESPONSE:

Debtors' attorney filed a response stating that he has been unable to contact the Debtors and requests that if the Debtors have not made all required payments by the date of the hearing that they be given additional time to cure the delinquency.

DISCUSSION:

The September 5, 2018 hearing was continued to provide the Debtors additional time to cure the delinquency and provide the court an explanation where they were able to obtain the funds to cure the delinquency.

The November 14, 2018 hearing was continued again to provide the Debtors additional time to cure the delinquency and provide the court with an explanation of how the Debtors are able to cure the delinquency.

On November 20, 2018, Debtors' counsel filed an opposition stating that he was able to communicate with his clients and had previously been unable to reach his clients due to a medical condition related to their daughter. Debtors' counsel states that he informed his clients about the need to bring the plan payments current and states that the Debtors will be able to cure, or substantially cure, the delinquency by the hearing. Debtors' counsel states, without a supporting declaration from his clients, that the Debtors are able to cure the delinquency from a back payment of Social Security in the approximate amount of \$10,900.00 owed to their daughter.

At the hearing -----.

In the absence of evidence that the Debtors can cure the delinquency by the hearing date, the court finds the Trustee's objections valid. As the debtors are delinquent and have not complied with all of the requirements under 11 U.S.C. § 1307, cause exists to dismiss this case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

No Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on October 16, 2018. Twenty-eight days notice is required. That requirement is met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to *grant* the Motion to Dismiss.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

A. Debtor is delinquent in plan payments in the amount of \$2,060.00, with one payment in the amount of \$1,030.00 due prior to the date of hearing. Debtor has paid \$47,380.00 into the plan to date.

FILING OF MODIFIED PLAN

Debtor did not respond to the Trustee's Motion to Dismiss, despite the Motion being filed pursuant to Local Bankruptcy Rule 9014-f(1), which allows for a final determination in the absence of response. However, upon the courts own independent review of the docket, the court notes that Debtor filed a Motion to Modify Plan. Dckt. 58.

Debtor filed a Modified Plan and Motion to Confirm on November 5, 2018. Dckt. 58. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 58; 61. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Notwithstanding filing a modified plan and motion to confirm, Debtor has allowed her default to be entered. On November 10 , 2018, Debtor's counsel filed an untimely response stating that a Modified Plan

was filed and requests that the case not be dismissed.

On November 14, 2018, the court continued the hearing to afford counsel for the Debtor additional time to address the issues identified above.

At the hearing -----.

In the absence of evidence that the Debtor has filed and served a Motion to Confirm a confirmable Plan, the Motion is ~~granted and the bankruptcy case is dismissed~~.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is ~~granted and the bankruptcy case is dismissed~~.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on the Debtor Trustee, and other such other parties in interest as stated on the Certificate of Service on October 19, 2018.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on October 12, 2018).

The court's decision is to sustain the Order to Show Cause.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

TRAVIS CREDIT UNION VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2018. 14 days' notice is required. That requirement was met.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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The Motion for Relief from the Automatic Stay is granted.

Travis Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 GMC Sierra, VIN ending in 2563 ("Vehicle"). The moving party has provided the Declaration of Deborah Miller to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Bradley Gilbreath ("Debtor").

The Deborah Miller Declaration provides testimony that Debtor has not made eight post-petition payments, with a total of \$2,894.16 in post-petition payments past due. The Declaration also provides evidence that there are eight pre-petition payments in default, with a pre-petition arrearage of \$1,894.39.

Movant has not provided a Valuation Report for the Vehicle. Only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$10,000.00, as stated in Schedules B and D filed by Debtor. Dckt. 10.

DEBTOR DID NOT FILE AN OPPOSITION:

Debtor did not file an Opposition.

TRUSTEE'S RESPONSE:

The Trustee responds that he does not oppose the Motion. The Trustee notes that Debtor's Schedules A/B and D indicate the Debtor co-signed a loan for his son and the Vehicle is in his son's possession. The Debtor is current under the proposed Plan. The court notes that Plan was confirmed on November 20, 2018. Dckt. 67.

DISCUSSION

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation]. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375-76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick ("the Chapter 13 Trustee"), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

Co-Debtor Stay:

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because the co-debtor has possession of the Vehicle and no payment has been made since June 23, 2017.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to

repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Travis Credit Union(“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2006 GMC Sierra, VIN ending in 2563 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of Christopher Fegins of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

No other or additional relief is granted.

WELLS FARGO BANK, N.A. VS.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2018. 28 days’ notice is required. That requirement was met.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

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| <p>The Motion for Relief from the Automatic Stay is XXXXX.</p> |
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Wells Fargo Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to Timothy Patrick Janovich’s (“Debtor”) real property commonly known as 703 Main Street, Roseville, California (“Property”). Movant has provided the Declaration of Rachel Mdarcella Cathcart Love to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Rachel Mdarcella Cathcart Love Declaration states that there are four post-petition defaults in the payments on the obligation secured by the Property, with a total of \$5,591.12 in post-petition payments past due. The Declaration also provides evidence that there are no pre-petition payments in default.

DEBTOR’S OPPOSITION:

Debtor filed an Opposition on November 20, 2018. Dckt. 47. Debtor asserts that he filed this Chapter 13 bankruptcy proceeding to prevent the foreclosure on the subject Property. Debtor asserts that the alleged non-payments were paid through his Chapter 11 bankruptcy; however, the Movant refused tender of the payments from the Chapter 11 administrator. This bankruptcy proceeding was filed as an attempt to pay the alleged arrears to this lender which may have accumulated between the date of confirmation of the Chapter 11 Plan and the date of the filing of this Chapter 13 case. Dckt. 48, Janovich Declaration.

TRUSTEE'S RESPONSE:

The Trustee responds that he does not oppose the Motion. The Trustee flags for the court that the Movant is included in Debtor's proposed Plan as both a Class 2A creditor with regard to the mortgage arrears and as a Class 4 creditor regarding the first mortgage. The Trustee further notes that the Debtor has not filed a Motion to Confirm the Plan and was notified in September that an Amended Plan would be filed, but to date has not been filed. Dckt. 45.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$126,934.02 as stated in the Rachel Mdarcella Cathcart Love Declaration and Schedule D. The value of the Property is determined to be \$304,952.00, as stated in Schedules A and D.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court requires additional testimony from the parties in order to determine whether cause exists for terminating the automatic stay, as a result of purported defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

At the hearing -----.

~~The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.~~

~~—————No other or additional relief is granted by the court.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~—————Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~—————The Motion for Relief from the Automatic Stay filed by Wells Fargo Bank, N.A. ("Movant") having been presented to the court, and upon review of the pleadings,~~

evidence, arguments of counsel, and good cause appearing;

~~IT IS ORDERED~~ that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 703 Main Street, Roseville, California, (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

~~No other or additional relief is granted.~~

DAVID MERCURIO VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2018. 28 days' notice is required. That requirement was met

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

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| <p>The Motion for Relief from the Automatic Stay is denied.</p> |
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David Mercurio ("Movant") seeks relief from the automatic stay with respect to Frank Davis's ("Debtor") real property commonly known as 3908 Washington Avenue, Sacramento, California ("Property"). Movant has provided the Declarations of David Mercurio to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The David Mercurio Declaration states that this is Debtor second bankruptcy proceeding since July 2015. In the first bankruptcy proceeding (Case No. 15-25641) the Plan was confirmed with the condition that Debtor would sell or obtain a refinancing agreement within 18 months. Debtor did not do so and the case was converted to a Chapter 7 on February 28, 2018. On July 6, 2017, the court granted a motion to reconvert to a Chapter 13 case. The Amended Plan in the prior case was not confirmed and on February 28, 2018, the prior case was dismissed upon request of the Debtor.

Debtor filed the current bankruptcy proceeding on August 17, 2018, on the same date as the scheduled foreclosure sale. Pending in Debtors current case is a Motion to Confirm Plan, which Movant opposes based on feasibly concerns and a failure to address delinquent real property taxes.

CHAPTER 13 TRUSTEE'S RESPONSE:

The Chapter 13 Trustee responds to the Motion by noting that Movant is included in Debtor's proposed Plan as a Class 2A creditor. The proposed Plan provides for monthly payments of \$1,270.00 to Movant with a 7% interest rate until the property is sold on or before March 25, 2019, where the creditor will be paid in full from the proceeds of the sale.

The Movant has filed an opposition to the confirmation of the proposed Plan, set for hearing on December 4, 2018. The Trustee filed a non-opposition to the Debtor's Motion to Confirm and notes that Debtor is current under the proposed Plan payments.

DEBTOR'S OPPOSITION:

Debtor's counsel responds by stating that Debtor's Motion to Confirm is set for hearing on December 4, 2018 and provides for full payment of Movant's claim. The court has approved Debtor's employment of a Real Estate professional to sell the home and the Debtor has signed an MLS Agreement and has the Property listed for immediate sale. The sale will provide for Movant's claim and all real property taxes. The Property is insured through October 11, 2019 by Averwood Insurance Services, Inc. Debtor is current on proposed Chapter 13 Plan payments. Additionally, the Debtor states that the value of the home is \$215,000.00 and the Movant's secured claim is approximately \$80,051.61. Dckt. 84.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$80,051.61, as stated in the David Mercurio Declaration and Schedule D. The value of the Property is determined to be \$215,000.00, as stated in Schedules A and D.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order denying to Motion to terminate the automatic stay.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by David Mercurio (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the automatic stay provisions of 11 U.S.C. § 362(a) is denied.

No other or additional relief is granted.

5AIF SYCAMORE 2, LLC VS.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor pro se, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2018 as required by court Order. Dckt. 18. The court set the hearing for November 20, 2018. Dckt. 18.

The Motion For Relief From Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----
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| <p>The Motion for Relief from the Automatic Stay is XXXXX.</p> |
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5AIF Sycamore 2, LLC ("Movant") seeks relief from the automatic stay with respect to Marcus Cotton's ("Debtor") real property commonly known as 2730 Bell Street, Sacramento, California ("Property"). Movant has provided the Declaration of Patricia McLoon to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant states that the borrower on the subject obligation is an entity, Muscle Builder, Inc. ("the Borrower"), that is wholly owned by Debtor. The Patricia McLoon Declaration states that the loan entered into by the Borrower matured on March 12, 2018 and Movant recorded a notice of default with Sacramento County. Dckt. 16, Exhibit 9. On June 25, 2018, the Movant recorded a Notice of Trustee's Sale. Dckt. 16, Exhibit 10. On July 26, 2018, the Movant, the Borrower, the Debtor, and another individual who was an additional guarantor on the loan entered into two forbearance agreements. Dckt. 16, Exhibits 11 and 12.

Movant claims that Debtor has taken deliberate steps to frustrate Movant's ability to foreclose including:

A. Causing unauthorized pre-petition transfers including. A transfer from Borrower (entity wholly owned by Debtor) to Debtor and a transfer from Debtor to Debtor's mother. Dckt. 16,

Exhibits 6 and 7, grant deeds.

B. Filing a state court complaint seeking injunctive relief to prevent foreclose. Dckt. 16, Exhibit 13. Movant claims this complaint was dismissed because it sought frivolous relief. and

C. Initiating bankruptcy proceedings with incomplete filings:

a. Case No. 18-26436: filed on October 11, 2018 without completed Schedules. On, October 31, 2018, obtained an extension to file Schedules. Case No. 18-26436; Dckt. 13. On November 9, 2018, the case was dismissed for failure to file required Schedules. Case No. 18-26436; Dckt. 26.

b. Present case, filed on November 15, 2018 with incomplete schedules.

Additionally, Movant alleges that while Debtor claims to be *pro se* in the current proceeding, the counsel that represented Debtor in the previously dismissed proceeding was in contact with Movant regarding this filing at late as November 15, 2018. Dckt. 19.

DEBTOR'S OPPOSITION:

Debtor did not file an opposition prior to the hearing.

At the November 20, 2018 hearing, the court continued the hearing to allow additional time for the Debtor to obtain counsel and file the required bankruptcy schedules.

DISCUSSION

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

~~The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights,~~

and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

~~**Federal Rule of Bankruptcy Procedure 4001(a)(3)-
Request for Waiver of Fourteen-Day Stay of Enforcement**~~

~~_____ Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.~~

~~_____ Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.~~

~~_____ No other or additional relief is granted by the court.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~_____ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~_____ The Motion for Relief from the Automatic Stay filed by 5AIF Sycamore 2, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS FURTHER ORDERED** that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:~~

~~_____ “If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”~~

~~_____ **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.~~

~~_____ No other or additional relief is granted.~~

ANTELOPE/CAPUTO, LLC VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2018. 14 days' notice is required. That requirement was met.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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| <p>The Motion for Relief from the Automatic Stay is granted.</p> |
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Antelope/Caputo, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 7307 Roseville Road, Suite 7, Roseville, California ("Property"). The moving party has provided the Declaration of Kirk E. Giberson to introduce evidence as a basis for Movant's contention that Russell Puckett ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento and pursuant to a settlement received a judgment for possession, with a Writ of Possession having been issued by that court on April 26, 2018. Exhibit D, Dckt. 13.

Movant has provided a copy of the Stipulation and certified record of the Order and Writ of Possession. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Antelope/Caputo, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 7307 Roseville Road, Suite 7, Roseville, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Antelope/Caputo, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Antelope/Caputo, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 7307 Roseville Road, Suite 7, Roseville, California.

No other or additional relief is granted.

FINAL RULINGS

11. [18-25359-C-13](#) JOSEPH VENEGAS
[JCW-1](#) Chad Johnson

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
10-30-18 [\[38\]](#)

U.S. BANK, N.A. VS.
DEBTOR DISMISSED: 11/19/2018

Final Ruling: No appearance at the December 4, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2018. 28 days' notice is required. That requirement was met.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case. The Motion for relief pursuant to 11 U.S.C. 362(d)(4) is granted.

Select Portfolio Servicing Inc., servicing Agent for U.S. Bank, N.A. successor trustee to LaSalle Bank National Association, on behalf of the holders of Bear Stearns Asset Backed Securities I Trust 2007-HE2, Asset-Backed Certificates Series 2007-HE2 ("Movant") seeks relief from the automatic stay with respect to Joseph Reyes Venegas's ("Debtor") real property commonly known as 8675 Elm Avenue, Orangevale, California ("Property"). Movant has provided the Declaration of Name of Kendall Proeun to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on November 14, 2018, for not making all required Plan payment and not attending the Meeting of Creditors. Dckt. 48.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) *revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of November 14, 2018, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

[11 U.S.C. § 362(d)(4)]

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by using the Debtor's bankruptcy as a continuation of the Debtor's parents multiple bankruptcy proceedings..

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation.

The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of how the Debtor acquired his interest in the subject property from his mother and designated Power of Attorney, Cherrone Elizabeth Peterson. Debtor's mother listed a 100% in the subject property in her pending Chapter 13 bankruptcy proceeding on her Schedule A. Case No. 16-21514, Dckt. 1. Cherrone Peterson has filed four bankruptcy proceedings in this district including: 16-2151; 14-29607; 12-29092; and 10-30003. Cherrone Peterson's most recent proceeding has a confirmed plan abandoning the subject Property to Select Portfolio Servicing. 16-2151; Second Modified Plan, Dckt. 132. The transfer of Cherrone Peterson's interest in the subject property to Debtor occurred on August 26, 2018, one day before Debtor's bankruptcy proceeding was filed. Dckt. 43, Exhibit F, Grant Deed. In effect, this is proceedings is a continuation of the series of bankruptcy attempts by Debtor's parents. Additionally, the court noted at the November 14, 2018 hearing on the Trustee's Motion to Dismiss that the bankruptcy proceeding appears to be one in which the Debtor's parents are getting the benefit of the bankruptcy. Dckt. 48.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to

commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

RULING:

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on November 14, 2018 and that prospective relief pursuant to 11 U.S.C. § 362(d)(4) is warranted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by U.S. Bank, N.A. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice as moot, this bankruptcy case having been dismissed on November 14, 2018 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Joseph Reyes Venegas (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 8675 Elm Avenue, Orangevale, , California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the November 14, 2018 dismissal of this bankruptcy case.

IT IS FURTHER ORDERED that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

“If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”

12. [17-24000-C-13](#) **LYNDA STOVALL**
[AP-2](#) **Peter Macaluso**
 10-24-18 [126]
HSBC BANK USA, N.A. VS.

**MOTION FOR RELIEF FROM
AUTOMATIC STAY**

Final Ruling: no appearance at the December 4, 2018 hearing.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2018. 28 days' notice is required. That requirement was met.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is continued to December 18, 2018 at 1:30 p.m.

HSBC Bank USA, National Association as Trustee for Nomura Asset Acceptance Corporation, Mortgage Pass-Through Certificates, Series 2006-AR2 ("Movant") seeks relief from the automatic stay with respect to Lynda Stovall's ("Debtor") real property commonly known as 7544 Wynndel Way, Elk Grove, California ("Property"). Movant has provided the Declaration of LaKeidra Barber to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The LaKeidra Barber Declaration states that there are 3 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$8,454.26 in post-petition payments past due. The Declaration also provides evidence that there are 6 pre-petition payments in default, with a pre-petition arrearage of \$14,238.97.

CHAPTER 13 TRUSTEE'S RESPONSE:

The Chapter 13 Trustee responds that Debtor is delinquent \$15,279.27 under the confirmed plan. Debtor has paid \$42,724.95 into the plan. The Trustee's Motion to Dismiss has been continued to December 18, 2018 to allow for the resolution of Debtor's Motion to Confirm a Modified Plan. If the Modified Plan is confirmed it will cure the delinquency. The court notes that Trustee has filed an Opposition to the pending Motion to Confirm the Modified Plan stating that Debtor is delinquent under both the

confirmed and the modified Plan and that the proposed Plan requires 62 months to complete.

DEBTOR'S RESPONSE:

Debtor's counsel responds that Debtor has filed a Motion to Confirm Modified Plan set for hearing on December 18, 2018. The proposed modified Plan provides for the post-petition outstanding payments on the mortgage sought in Movant's Motion. Debtor requests that the Motion for Relief be heard after the court has resolved Debtor's pending Motion to Confirm the Modified Plan.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$315,612.14, as stated in the LaKeidra Barber Declaration and Schedule D. The value of the Property is determined to be \$313,000.00, as stated in Schedules A and D.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim if the Modified Plan is approved. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004).

However, whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments will have come due if the Modified Plan is not confirmed. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

As such, since the courts determination of whether there is cause to grant relief from stay is predicated on whether the Debtor is able to confirm their proposed Modified Plan, the court will continue the hearing until December 18, 2018.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the

hearing.

The Motion for Relief from the Automatic Stay filed by HSBC Bank USA, National Association as Trustee for Nomura Asset Acceptance Corporation, Mortgage Pass-Through Certificates, Series 2006 (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from Automatic Stay is continued to December 18, 2018 at 1:30 p.m.

DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Final Ruling: No appearance at the December 4, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 2018. 28 days' notice is required. That requirement was met.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

Deutsche Bank National Trust Company, as Indenture Trustee, for New Century Home Equity Loan Trust 2005-4 ("Movant") seeks relief from the automatic stay with respect to Newalow Weeks and Linda Week's ("Debtors") real property commonly known as 1128 Grace Avenue, Sacramento, California ("Property"). Movant has provided the Declaration of Therenia Blair to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Therenia Blair Declaration states that there are six post-petition defaults in the payments on the obligation secured by the Property, with a total of \$12,469.56 in post-petition payments past due. The Declaration also provides evidence that there are two pre-petition payments in default, with a pre-petition arrearage of \$4,156.52.

DEBTORS' AND CHAPTER 13 TRUSTEE'S NON- OPPOSITION

Both the Debtors and the Chapter 13 Trustee filed non-opposition to the Movant's Motion. Dckts. 78 and 82. In both filings, it is stated that Debtor has surrendered the property.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$469,637.28, as stated in the Therenia Blair Declaration and Schedule D. The value of the Property is determined to be \$390,676.00, as stated in Schedules A and D.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432. Additionally, the Debtor has surrendered the property.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Deutsche Bank National Trust Company, as Indenture Trustee, for New Century Home Equity Loan Trust 2005-4 (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Deutsche Bank National Trust Company, as Indenture Trustee, for New Century Home Equity Loan Trust 2005-4, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and

their respective agents and successors under any trust deed that is recorded against the real property commonly known as 1128 Grace Avenue, Sacramento, California, (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

No other or additional relief is granted.
